

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CAREFREE ENZYMES, INC.,
PATRICK HALEY, and
ENVIRONMENTAL PLANT
MANAGEMENT,

Plaintiffs,

v.

APOGEE GARDEN PRODUCTS, INC.
and JASON SMITH,

Defendants.

Case No. 20-CV-1636-JPS

ORDER

On October 28, 2020, Defendants removed this defamation case to federal court based on diversity jurisdiction. *See* 28 U.S.C. §§ 1332(a), 1441(b); ECF No. 1. On March 22, 2022, after mediation before Magistrate Judge William E. Duffin, the parties filed a joint motion to dismiss the matter with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). ECF No. 25. The parties asked the Court to retain jurisdiction to enforce the terms of the Cease and Desist Agreement, which governs the parties' future conduct. *Id.* at 2. They attached a copy of the executed Settlement Agreement to the joint motion, as well as the mutual Cease and Desist Agreement, which contains the parties' contemplated breach of contract recourse. ECF Nos. 25-1, 25-2.

This type of dismissal is typically disfavored in this circuit. *See Dupuy v. McEwen*, 495 F.3d 807, 809–10 (2007). Thus, on April 20, 2022, the parties filed an amended joint motion to dismiss pursuant to Federal Rule of Civil Procedure 41(a)(2), in which they again asked the Court to retain jurisdiction to enforce the terms of the Cease and Desist Agreement, but this

time requested the Court to dismiss the matter *without* prejudice in order to retain jurisdiction of the parties in order to enforce the terms of the Cease and Desist Agreement. ECF No. 26. The parties included a copy of the Settlement Agreement with an addendum and the Cease and Desist Agreement. ECF Nos. 26-1, 26-2. The Court will grant the parties' motion to dismiss the case without prejudice in order to retain jurisdiction to enforce the Cease and Desist Agreement.

Accordingly,

IT IS ORDERED that the parties' first joint motion to dismiss, ECF No. 25, be and the same is hereby **DENIED**;

IT IS FURTHER ORDERED that the parties' amended motion to dismiss, ECF No. 26, be and the same is hereby **GRANTED**;

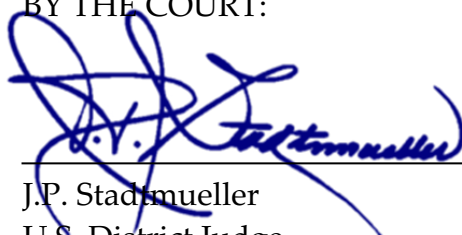
IT IS FURTHER ORDERED that this action be and the same is hereby **DISMISSED without prejudice**; and

IT IS FURTHER ORDERED that the Court shall retain jurisdiction to enforce the terms of the Cease and Desist Agreement governing the future conduct of the parties in this case with respect of each other and any dispute regarding breach thereof.

The Clerk of Court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 26th day of May, 2022.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge